Division Bench

CF1002 (1)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION No. 5719 OF 2006

PETITIONER Abhishek Agrawal, son of Shri Gopal Prasad Agrawal, aged about 20 years, resident of C-99, Sector-1, Devendra Nagar, Raipur.

Vs

RESPONDENTS

1. State of Chhattisgarh, through the Secretary, Department of Public Health and Family Welfare/ Medical Education, D.K.S. Bhavan, Raipur (C.G.).
2. The Director, Health Services, Government of Chhattisgarh, D.K.S. Bhawan, Raipur (C.G.)
3. C.G. Personnel Examination Board, Tagore Nagar, Raipur.
4. Chhattisgarh Institute of Medical Sciences (CIMS), Bilaspur, through the Dean, CIMS, Bilaspur.
5. Medical Council of India, Aiwan-E-Galib Marg, Kotla Road, New Delhi - 110002
6. Ku. Renu Patil, daughter of Shri S.K. Patil, resident of Bilaspur, through Dean, Chhattisgarh Institute of Medical Sciences (CIMS), Bilaspur.

P.R. No. 5242/06
Presented by Shri B.P. Sharma
dated 13/10/06

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PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH: HON. MR. L.C. BHADOO &
HON. MR. DHIRENDRA MISHRA, JJ

WRIT PETITION NO.5719 OF 2006

PETITIONER		Abhishek Agrawal .
	Vs	
RESPONDENTS		State of Chhattisgarh and others.

ORDER FOR CONSIDERATION

Sd/-
Dhirendra Mishra
Judge

HON'BLE MR. L.C. BHADOO, J

Sd/-
L.C.Bhadoo
Judge

POST FOR ORDER ON 28th JUNE, 2007

Sd/-
Dhirendra Mishra
Judge

seen
28/6/07

Seen
28-06-07

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 5719 OF 2006

DIVISION BENCH **HON. SHRI L.C. BHADOO &**
HON. SHRI DHIRENDRA MISHRA, JJ

Petitioner : Abhishek Agrawal, son of Shri Gopal Prasad Agrawal, aged about 20 years, resident of C-99, Sector-1, Devendra Nagar, Raipur.

Vs

Respondents :

1. State of Chhattisgarh, through the Secretary, Department of Public Health and Family Welfare/Medical Education, D.K.S. Bhavan, Raipur (C.G.)

2. The Director, Health Services, Government of Chhattisgarh, D.K.S. Bhavan, Raipur (C.G.)

3. C.G. Personnel Examination Board, Tagor Nagar, Raipur.

4. Chhattisgarh Institute of Medical Sciences (CIMS), Bilaspur, through the Dean, CIMS, Bilaspur.

5. Medical Council of India, Aiwan-E-Galib Marg, Kotla Road, New Delhi – 110002.

6. Ku. Renu Patil, daughter of Shri S.K.Patil, resident of Bilaspur, through Dean,

Chhatisgarh Institute of Medical Sciences (CIMS), Bilaspur.

Present:

Mr. B.P. Sharma, learned counsel for the petitioner.
Mr. U.N.S. Deo, learned G.A. for respondents No.1 & 2.
Mr. Pankaj Agrawal, learned counsel for respondent No. 3.
Mr. Manindra Shrivastava, learned Sr. Advocate with Mrs. Smita Ghai, learned counsel for respondent No. 4.
Mr. Ranbir Singh Marhas, learned counsel for respondent No. 5.
Mr. Sanjay K. Agrawal, learned counsel for respondent No. 6.

O R D E R
(Passed on 28th June 2007)

Dhirendra Mishra, J

The petitioner by the instant petition under Article 226/227 of the Constitution of India seeks a writ or an order in the nature of writ of mandamus calling upon respondents-State authorities and particularly respondent No.4 CIMS to admit the petitioner in M.B.B.S. course and any other relief which may be granted in the interest of justice.

2. Grievance of the petitioner, in brief, is that he appeared in the entrance examination for the year 2006-07 for admission in the M.B.B.S. course (PMT Examination) as a candidate of unreserved category (No class). His rank was 208 in the State. He appeared for counseling on 22nd August 2006 as per call letter issued by respondent No.2 of Annexure P/3. On the date of counseling he was apprised that in case he opts, he may be admitted to B.D.S. course, however, he opted for M.B.B.S. course and decided to remain in the waiting list as his name was at Sl.No.5 of the waiting list as per information given to him. The petitioner learnt from newspaper reporting that final counseling was to be held on 28th September 2006. He was informed orally that the seats of M.B.B.S. course have already filled up and if he is willing to join

B.D.S. course, then only he may appear in the counseling to be held on 28th September 2006. On the same day, he came to know that three students who were eligible for admission in the M.B.B.S. course have not opted for the course/have not completed their formalities, therefore, three seats of M.B.B.S. course are lying vacant. However, all the candidates who were placed above the petitioner in the merit list opted and admitted in the M.B.B.S. course. The candidate who was at Sl.No.1 in the waiting list did not opt for admission and after final counseling the position emerged that he was at wait list No. 1 and was entitled for admission in M.B.B.S. course, if any seat fell vacant of general category. Subsequently, two days before filing of petition he learnt that one student who was admitted to M.B.B.S. did not join the said course in CIMS and respondent No.6 was admitted against the vacant seat available at CIMS. His representations and requests with the authorities to allot the vacant seat of M.B.B.S. course to him on the ground that he was at Sl.No.1 in the waiting list and as such had preferential right of admission, were ignored and in his place respondent No.6, whose overall rank is 1139 in unreserved (No class) category and who secured just 269.09 marks in P.M.T. was admitted. The action of the respondents-State authorities is arbitrary and malafide. It was further alleged that respondent No. 6 was daughter of Mr. S.K. Patil, who is working as professor with respondent No. 4, CIMS, and therefore, she was admitted from the backdoor.

3. Respondent No. 4 in its reply has submitted that the answering respondent-Institution has 50 free seats and 50 payment seats of M.B.B.S. course, as per rules and instructions of the Government centralized counseling was conducted by Director Medical Education (for brevity DME) at Raipur, admissions were to be made in accordance with the rules notified vide Annexure R-4/1. After final counseling list of admitted students was prepared and the same was forwarded to CIMS for giving them admission. The admissions were made strictly in accordance with the list

furnished by D.M.E. as per counseling held on 13th/14th July, 22nd/23rd August and 28th September 2006, subject to the candidates fulfilling other requirements such as deposit of necessary fees etc. The last list after counseling dated 28th September 2006 of selected candidates was forwarded from D.M.E. and accordingly, allotment/provisional admission letters in respect of seven candidates were received vide Annexure R-4/2. The admitted candidates were to take admission latest by 12.00 noon of 30th September 2006. No seat was allotted to the petitioner in the final counseling on 28th September 2006. Out of seven seats five were to be filled up against payment quota and two seats were to be filled up against free quota. When the petitioner could not get admission in the M.B.B.S. course in the final counseling, probably he opted for B.D.S. course and continued pursuing his studies in the B.D.S. course. All the admissions were granted to those candidates who appeared within the time stipulated and fulfilled other conditions regarding deposit of fees, furnishing of original mark-sheets etc. In reply to the Fax message dated 30th September 2006 received at 4.12 p.m. of Annexure R-4/3 Dean, CIMS vide Fax message of Annexure R-4/4, 5.08 p.m. communicated the list of admitted students and list of absent students. By this communication directions were sought regarding vacant seats. Admission of one candidate namely Ku. B.K. Rashmi was cancelled and communication to this effect was sent to her vide Annexure R-4/5 intimating her that since she could not produce original mark-sheets of Class-XII till 4.00 p.m. on 30th September 2006 and she did not appear personally till 7.00 p.m. on that date, her admission was cancelled and tuition fee deposited by her was directed to be refunded. A copy of this communication was also forwarded to D.M.E., Raipur for information and final list of admission given on 30th September 2006 was sent to D.M.E. vide Annexure R-4/7. It has been further averred that after cancellation of admission of Ku. B.K. Rashmi, the admission process committee of the CIMS decided to grant

admission to the candidates who were present in the office of Dean as they did not have telephone numbers and addresses of other candidates and only few hours were left for completing the admission process. Allegation of favouring respondent No.6 on the ground that she happened to be the daughter of one doctor working in CIMS, was denied and it was contended that due to eleventh hour cancellation of admission of B.K. Rashmi, CIMS acted bonafidely under given circumstances as per their best judgment and gave admission to respondent No. 6 as she was present along with requisite fees and original documents.

4. Respondent No. 6 in her return has stated that the petitioner is pursuing his studies in B.D.S. course since 2005 in Govt. Dental College, Raipur and while pursuing his studies he appeared in the entrance examination of B.D.S. course held in the year 2006 and this fact has been suppressed by the petitioner in the petition. Her admission to the M.B.B.S. course was strictly in accordance with the law and allegation of favouritism and backdoor admission, has been denied.

5. Respondent No. 1 & 2 in their joint return have stated that the petitioner was already pursuing B.D.S. course in Govt. Dental College, Raipur since 2005 and Rule 7.2 of Chhattisgarh Medical and Dental Graduate Admission Examination Rules, 2006 (for brevity 'the Rules 2006) imposes a bar for change of college, course and seat etc. at any circumstance. It was further contended that CIMS and University had exclusive jurisdiction for admission to M.B.B.S. course and respondents No. 1 & 2 were not concerned. After each counseling the candidates who did not opt for admission or who were not allotted seats, remain in the waiting list and D.M.E. vide Fax message sent at 4.10 p.m. on 30.9.2006 directed all the institutions including CIMS to complete all the formalities of admission by 30.9.2006 itself being the last date of admission and in case of vacancy seek further direction/guidance from D.M.E. The D.M.E. further communicated CIMS vide document of

Annexure R-1/3 by Fax, to act in accordance with and on the basis of their rules as the alleged vacant seats fell within the management quota. Final counseling was held on 28th September 2006, seats were allotted on the basis of merit and successful candidates were given time limit of two days for getting admission in the allotted colleges. Since the seat fell vacant only on 30th September 2006, it was not practicable to intimate the candidates within a period of few hours, that too, in the late hours of the deadline. It was duty of the petitioner to be vigilant for seeking admission in the M.B.B.S. course and he ought to have remained present at the time of admission as the candidates who were present at that time were considered for admission.

6. Respondent No.5, Medical Council of India, in a separate return has also opposed contentions of the petitioner in the petition.

7. The petitioner in his rejoinder to the reply disputed the contentions of respondents No. 1 & 2 that respondent No. 6 has been admitted against the management quota and contended that she was admitted in general seat and has paid fees payable under the general category. He has further stated that he had every right to appear in P.M.T. examination in order to get admission in M.B.B.S. course and continuance of his studies in B.D.S. course in Govt. Dental College, Raipur since the year 2005, does not prohibit him from securing admission in the medical college. He was present on the date of counseling before the authorities of the respondents, no efforts were made by respondent No. 4 to contact the eligible candidates as per waiting list over telephone as per directions of the D.M.E. The petitioner has mentioned his telephone number in the bio data annexed with the application form of 2006 vide Annexure P/11 and also O.M.R. sheet annexed with the application. CIMS did not seek any instructions regarding admission to vacant seat of general category from D.M.E.

8. Learned counsel for the petitioner submitted that petitioner was the only candidate entitled for admission to M.B.B.S. course for the year 2006-07 in CIMS as after final counseling held on 28th September 2006, the petitioner's number was first in the waiting list and his overall rank in unreserved category (No class) was 208 whereas the rank of respondent No. 6 was 1139 and under these circumstances, suitable orders/directions may be passed under Article 226 of the Constitution of India.

9. Reliance is placed on the judgment of the Hon'ble Apex Court in the matter of **Sardar Amarjit Singh Kalra (dead) by L.Rs. and others Versus Pramod Gupta (Smt.) (dead) by L.Rs. and others** reported in **(2003) 3 SCC 272** and it is submitted that "*ubi jus ibi remedium*" (where there is a right, there is a remedy) is the basic principle of jurisprudence. Suitable orders/directions may be passed so that right of the petitioner is protected and the pleadings in the writ petition may not be allowed to come in the way of giving justice to the petitioner who is admittedly more meritorious than respondent No.6 and has been denied admission. The stand of the respondents particularly respondent No.4 that one vacancy in the general category arose all of a sudden due to non-appearance of admitted student Ku. B.K. Rashmi and non-production of original mark sheet of Class-XII, therefore, to fill up the certain vacancy on the last date of admission names of the candidates who were present in the institute were considered and since respondent No.6 was found the only candidate whose rank was higher in the merit list than others, she was given admission as per directions of the D.M.E., is not convincing. No document has been filed which shows that other candidates of general category below the rank of respondent No. 6 were present at the relevant time. It is unconceivable that candidates of general category ranking 1139 and below, could be present in CIMS premises with the huge amount of Rs.40,000/- and their testimonials with the hope that they may get admission against the vacancy generated at the last moment. The whole circumstances

is to be viewed in the background of the fact that father of respondent No. 6 was member of the committee constituted by CIMS for the purposes of admission. It was further argued that right of counseling is vested with the counseling committee having D.M.E., Dean, Medical or Dental College and representatives of C.G. Personnel Examination Board as members. The committee was monitoring the admissions at Raipur up to 30th September 2006 and respondent No. 4 was in live contact with the committee. However, no direction was sought from the counseling committee about the vacancy against the general category arose at the last moment due to cancellation of admission of Ku. B.K. Rashmi and respondent No. 6 was admitted without obtaining concurrence of the committee and without making any endeavour to contact either the counseling committee or any other eligible candidates over telephone. Respondent No. 6 has been admitted in the medical course by unauthorized committee, the same was done by illegally exercising the jurisdiction not vested in them and by practicing fraud with the petitioner, therefore, in these circumstances, admission of respondent No.6 deserves to be cancelled.

10. Reliance is placed on the judgment of the Hon'ble Apex Court in the matter of **Aman Deep Jaswal Versus State of Punjab and others** reported in **(2006) 9 SCC 597** and it has been argued that the petitioner may be admitted in the M.B.B.S. course in the next academic year i.e. 2007-2008 within the sanctioned intake of CIMS.

11. Further relying upon the judgment of the Hon'ble Supreme Court in the matter of **U.P. State Brassware Corpn. Ltd. Versus Uday Narain Pandey** reported in **(2006) 1 SCC 479** , it is argued that the relief may be moulded in the given situation and such reliefs may be granted as the parties may be found to be entitled to in equity and justice.

12. Reliance is also placed on the judgment of the Hon'ble Supreme Court in the matter of **Harshali Vs. State of Maharashtra and others** reported in **(2005) 13 SCC 464** and it is contended that the Hon'ble Supreme Court has severally deprecated the manner of grant of admission to less meritorious students and denial of the same to the meritorious students, while granting admission in the government quota seats and in the facts of that case, respondents were directed to give admission to the appellant in first year M.B.B.S. course for the next session leaving open the other questions about loss of one year of career of the appellant.

13. On the other hand, learned counsel appearing on behalf of respondent No. 4 argued that after final counseling held on 28th September 2006 eligible candidates were admitted against the seats available in CIMS under unreserved category (No class) by the counseling committee, seven students were recruited for admission on that date and out of seven seats five were to be filled up against payment quota and two seats were to be filled up against free quota, a communication to this effect was sent by D.M.E. vide Annexure R-4/2. Recruited candidates were to take admission positively by 12.00 noon of 30th September 2006, failing which their admission was to be cancelled automatically. Directions were sought by CIMS from DME regarding vacant seats vide Annexure R-4/4 whereupon the DME vide Fax message of Annexure R-4/6 at 4.45 p.m. directed to contact next candidate in the merit list through telephone and in case they are unable to contact, the seats should be filled up in accordance with merit from the candidates of the same class and only thereafter, other candidates may be admitted after conversion. Since Ku. B.K. Rashmi was the candidate of unreserved category (No class), contact number of next candidate in the merit list was not available and respondent No. 6 and other candidates of the same category were present in the CIMS premises and respondent No. 6 was above in rank from all the available candidates, she was given

admission. Ku. B.K. Rashmi was recruited in the counseling, she had also deposited the requisite fees, therefore, management waited for her up to 7.00 p.m. on 30th September 2006 and thereafter, canceling her admission, respondent No. 6 was admitted as the last date of admission was 30th September 2006.

14. Placing reliance on the judgment of the Hon'ble Supreme Court in the matter of **Mridul Dhar (minor) and another Versus Union of India and others** reported in **(2005) 2 SCC 88**, it is contended that due to eleventh hour cancellation of admission of Ku. B.K. Rashmi, CIMS acted bonafidely under the given and compelling circumstances as per their best judgment and gave admission to respondent No. 6.

15. Further placing reliance on the judgment of the Hon'ble Supreme Court reported in **J.T. (2007) 2 S.C., 250** in the matter of **Vikram Dhillon –v- State of Haryana and others**, it is argued that one seat fell vacant due to eleventh hour cancellation of admission of Ku. B.K. Rashmi Yadav and the same has been filled by CIMS from among the wait listed candidates who were present in the college on that date and since the petitioner was not present on that date, he was not admitted. In these circumstances, the respondent No. 6 was admitted to the course as she was also the wait listed candidate and was above in ranking than others who were present.

16. Shri Sanjay K. Agrawal, learned counsel appearing on behalf of respondent No. 6 submitted that the petitioner has not sought the relief of cancellation of admission of respondent No. 6 and therefore, admission of Ku. Renu Patil, respondent No. 6, who is pursuing her studies since 2006 in CIMS, cannot be cancelled.

17. Reliance is placed on the judgment of the Hon'ble Supreme Court in the matter of **Chandigarh Administration Vs. Laxman Roller Flour Mills Pvt. Ltd**. reported in **(1998) 8 SCC 326** and it

is argued that it is settled law that unless the allegations made in the writ petition and a relief to that effect is also prayed for in the writ petition, the High Court is not justified in issuing any order in excess of the relief prayed for in the writ petition.

18. Further placing reliance on the judgment of the Hon'ble Supreme Court in the matter of **Vikram Dhillon** (supra), learned counsel for respondent No. 6 has adopted the arguments of respondent No. 4/CIMS.

19. We have heard learned counsel for the parties and gone through the material available on record.

20. The undisputed facts that emerge from the pleadings and documents filed by the respective parties, are as under:

(i) after conclusion of final counseling on 28th September 2006, petitioner as well as respondent No. 6 were not given admission in the medical course in any of the medical colleges in the State. In the last counseling, allotment/provisional admission letters in respect of seven candidates against seven vacant seats, out of which five were against payment quota and two were against free quota, were forwarded to the CIMS by the DME;

(ii) Ku. B.K. Rashmi Yadav was selected against free seat of MBBS course, Medical College, Bilaspur (CIMS). She had also deposited the requisite fees. The candidates who were selected after final counseling were directed to take admission on 30th September 2006 by 12.00 noon positively, failing which their admission was deemed to be cancelled automatically. The DME vide communication of Annexure R-4/3 dated 30th September 2006 at 4.12. p.m. instructed

respondent No. 4 to send the current list of admitted students through Fax forthwith and in the event of vacancy, seek instructions from the Directorate;

(iii) Dean, CIMS in reply to Annexure R-4/3, sent by way of Fax on the same day at 5.08 p.m., the list of admitted candidates in which two students of S.T. and O.B.C category were shown absent and guidelines were sought for filling the vacant seats. In reply to the above Fax message, DME through Fax dated 30th September 2006 at 7.04 p.m. instructed CIMS that in order to fill up the vacant seats of S.T. and O.B.C. category, they should try to contact the candidates on the basis of P.M.T. merits over telephone, if contact is not possible, they should stick to the guidelines given in the admission rules book of CIMS. Accordingly, firstly consider the candidates in the lower order of merit and lastly in case of non-availability of the candidates in those categories, admission after conversion is permissible;

(iv) A Fax message (Annexure R-4/7) was sent on 30.9.2006 by CIMS and it was informed that respondent No. 6 has been admitted against unreserved (No class) category and admission of Ku. B.K. Rashmi Yadav has been cancelled on the ground of non-production of original mark sheet of Class-XII;

(v) The petitioner was pursuing his studies in B.D.S. course in Govt. Dental College, Raipur for the academic year 2005-06, original documents of the petitioner were deposited in the Govt. Dental College, Raipur and the same could be released only after the candidate tenders his resignation (Annexure P/9).

21. Thus, from the admitted facts as mentioned above, it is manifestly clear that vacancy in unreserved category (No class) occasioned in CIMS, Bilaspur only on 30th September 2006 at 7.00 p.m. when admission of Ku. B.K.Rashmi Yadav was cancelled for not producing the original mark sheet of Class-XII. It is also evident that the petitioner was not present in CIMS on the last date of admission to take chance of admission against the last minute cancellation.

22. Learned counsel for the petitioner vehemently argued that as per Rule 6 of the Rules 2006, admission to the course could be given as per decisions of the counseling committee whereas in the instant case, admission against the vacancy has been given by the management of CIMS without seeking any direction from DME. He argued that the petitioner was present before the authorities of counseling committee at Raipur on 30th September 2006, therefore, there was no occasion for the petitioner to be present before the authorities of the CIMS on 30th September 2006. Even otherwise, the procedure adopted by CIMS for filling up the vacancy on 30th September 2006 is, on the face of it, contrary to the Rules 2006 as no direction was sought for filling the vacancy against unreserved (No class) category from the DME. On the other hand, instructions of the DME in this regard to seek guidance from the Directorate and further to contact the students over telephone, and select them on the basis of P.M.T. merit, have been ignored.

23. It is true that CIMS did not take specific instructions from the DME for filling the vacancy against unreserved (No class) category caused due to last moment cancellation of admission of selected student Ku. B.K. Rashimi Yadav and the respondents have admitted that they could not make efforts to contact the other meritorious candidates because they did not have their telephone numbers. It is also true that the petitioner had submitted his

telephone number along with his application for admission as also in the O.M.R. sheet, though there is unrebutted affidavit on behalf of the respondent No.4 that they did not have the contact numbers of other candidates and therefore, they could not contact them on telephone. However, the submission of learned counsel for the petitioner that the petitioner was present before the counseling committee at Raipur on 30th September 2006 throughout, appears to be improbable for the reasons that the petitioner has filed this petition on 13th October 2006 and in paragraph 5.5. of the petition, he has mentioned that he learnt about the admission of the respondent No. 6 Ku. Renu Patil in the MBBS course in CIMS only two days before i.e. on 11th October 2006. CIMS vide Annexure R-4/7 had communicated the list of admitted students on 30th September 2006 to DME which shows that Ku. Renu Patil was admitted against unreserved (No class) category after cancellation of admission of Ku. B.K. Rashmi Yadav therefore, had the petitioner been present before the DME on that date i.e. 30th September 2006 he would have definitely known about the admission of Ku. Renu Patil. Even otherwise, from the admission of the petitioner himself it is clear that he did not possess his original testimonials as the same had been deposited in Govt. Dental College, Raipur where he was pursuing his studies since 2005, so it was practically impossible for the petitioner to take admission in CIMS on 30th September 2006. Thus, we are of the view that the petitioner was not present at the time when admission was granted to respondent No. 6 as he learnt about her admission only on 11th October 2006. Had he been present along with necessary certificates/testimonials and requisite fees before the CIMS on 30th September 2006 to take a chance of admission against last moment cancellation of Ku. B.K. Rashmi, his claim for admission could have been considered.

24. In the aforesaid circumstance, we are of the considered opinion that the petitioner is not entitled to the relief of admission to the medical course. So far as prayer of the petitioner based on

the judgments of the Hon'ble Supreme Court in the matter of **Aman Deep Jaswal** (supra) and **Harshali Vs. State of Maharashtra** (supra) that the relief claimed by the him may be suitably moulded and respondents may be directed to admit the petitioner for the MBBS course in the session 2006-07 is concerned, in the cited cases less meritorious students were admitted ignoring the rightful claim of the petitioners of those cases and in these circumstances, the Hon'ble Apex Court issued directions to the respondents to admit the petitioner in the next session and imposed penalties on the respondents. However, in the present case, the petitioner was not selected after final counseling, he could avail a chance of admission due to last moment cancellation of admission of selected candidate, but he did not do so as he was not present at the time of admission on 30th September 2006, therefore, we are of the opinion that the petitioner cannot be granted the relief as claimed.

25. We are not inclined to accept the submission of learned counsel for respondent No.6 that since no prayer has been made by the petitioner regarding cancellation of admission of respondent No.6, her admission cannot be cancelled because the petitioner has throughout pleaded in his petition and pointed out the irregularities in procedure adopted by the respondent No.4 in granting admission to respondent No.6 and judgments in the matter of Chandigarh Administration (supra) is not applicable in the facts and circumstances of the present case.

26. Now coming to the question of validity of admission of respondent No. 6 to the medical course in CIMS, undisputedly respondent No. 6 is the daughter of Shri S.K. Patil, who is admittedly professor in the CIMS and was In Charge Dean during the period when his daughter was admitted to the MBBS course in his college. It is also evident from the record that after canceling the admission of Ku. B.K. Rashmi Yadav, no specific instructions was obtained from DME regarding filling up the vacancy of

unreserved (No class) category though there were instructions from the DME in this regard. It is also undisputed that respondent No. 6 was ranking 1139 in the merit list of P.M.T. examination and the candidates who were admitted against free seats of batch 2006-07 in P.M.T. had the ranking up to 100. Though we find considerable force in the submission of learned counsel for the petitioner that the procedure adopted by the respondents for filling up the vacancy of unreserved (No class) category and granting admission to respondent No. 6 raises questions of propriety, however, in the facts and circumstances of the case, particularly considering the fact that respondent No. 6 had appeared in P.M.T. examination, she was also in the select list though in the lower ranks and further considering that she has already pursued her studies in the medical college for the sessions 2006-07 and in case her admission is cancelled at this stage, one seat for the year 2006-07 shall remain vacant, we are of the considered opinion that no useful purpose will be served by canceling the admission of respondent No. 6 at this stage.

27. We are fortified in our views from the judgments of the Hon'ble Apex Court in the matter of Aman Deep Jaswal (supra) as also in the matter of Vikram Dhillon (supra) where identical allegations were made against the admitted respondents. In the matter of Aman Deep Jaswal, the Hon'ble Apex Court in paragraph 5 of the judgment had set aside the cancellation of admission of respondent Dr. Radhika Dhawan on the ground that she was also from the select list and put in almost a year in the course. Similarly, in the matter of Vikram Dhillon, also prayer of the petitioner to cancel the irregular admission of the respondent in Govt. Dental College, Rohtak, has been rejected.

28. Before parting with the case, we painfully observe that the procedure adopted by the respondents for giving admission in the medical course particularly during last stages of admission, lacks

transparency. The procedure adopted to fill in the vacancy in final stages leaves room for manipulation and backdoor admission. In order to ward off any grievance in this regard and to make the process of admission transparent due to last stage cancellation also, the procedure to be adopted in such eventuality, should be dully informed to all concerned well in advance so that the desirous and meritorious candidates may not complain that the admission was deliberately made without affording them any opportunity to take admission against such vacancies.

This Court in the matter of **Gitika Shankar Mishra Vs. State of Chhattisgarh and others, W.P.No. 3243 of 2003**, in paragraph 17 has observed thus:

"17. Before parting with the order I deem it appropriate to observe that this is not the first case where the faulty procedure for communicating the students to appear for counseling has been challenged. Such cases are coming up frequently before this Court. Therefore, all the Universities and the concerned authorities are expected to devise a method for communication of notice inviting eligible candidates to appear for counseling to maintain transparency in the admission process so that no grievance is raised by any candidate. For example, in this connection for the first counseling the procedure which is in vogue can be continued but where the second and further counseling is required to be conducted and short time is left for communication of notice as few number of candidates are required to be communicated, therefore, the authorities can adopt other methods of communication i.e. by sending telegram on their given address, through fax, telephone, T.V. or E-mail address in order to avoid complications and in order to avoid unnecessary litigation. In order to adopt this procedure at the time of inviting applications the candidates can be asked to give their telephone numbers, fax number, E-mail numbers and correct telegram address in the application form."

29. The above observations have been ignored in the instant case by the respondents though they were also party in the above petition.

30. Before closing the matter we consider it appropriate to record our disapproval over the manner in which admission was given to respondent No. 6 on 30th September 2006. The candidates who were admitted in final counseling on 28th September 2006 were directed to take admission on 30th September 2006 by 12.00 noon, failing which their admission was to be automatically cancelled. However, in the instant case respondent No. 4 waited up to 7.00 p.m. and only thereafter, the admission of Ku. B.K. Rashmi Yadav was cancelled. The documents available on record also show that instruction from the DME was not obtained for filling the vacancy caused due to cancellation of admission of Ku. B.K. Rashmi Yadav. In these circumstances, it would have been appropriate for the State to at least enquire into the matter and on the basis of certain enquiries, take actions against the erring officers. It is the duty of the State Government to see that not only the officers should act in consonance with the law but also to ensure that no injustice is done to meritorious students. Unfortunately, the State Government has not properly assisted the Court by placing relevant facts as are expected to be placed by a public authority. However, in the light of the fact that we are not in a position to grant relief to the petitioner, we leave this matter to the State Government to take such action as it deems fit so that in future admissions are made strictly in accordance with rules in a transparent manner.

31. For the foregoing reasons, the petitioner is not entitled for the reliefs as claimed in the petition. The petition deserves to be dismissed and is accordingly dismissed. However, there shall be no order as to costs.

Sd/-
L.C.Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge